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FLOOR DEBATE

May 29, 2001

LB 85

the department that the contractor can...

PRESIDENT MAURSTAD: One minute.

SENATOR SCHIMEK: ...obtain insurance or provide self-insurance to compensate the state for any property damage or expense incurred due to the operation of the facilities and to indemnify the state against possible lawsuits arising from the operation of the prison facilities by the private contractor. So I just wanted to get that into the record. I think I made a note of that when I was introducing the bill, but didn't bring that to your attention when you asked your question. Thank you.

PRESIDENT MAURSTAD: Thank you, Senator Schimek. Senator Wickersham, you're recognized to close.

SENATOR WICKERSHAM: Mr. President, I will reiterate what we're discussing here is a rather narrow legal issue and that is, and as painful as it may be to contemplate it, to absolutely prohibit a type of interstate commerce within its borders. I simply don't think you can do that. The bill as it was introduced, in Sections 5 and 6, set up a rather sensible structure, it seemed to me, for regulating private prison contractors who were potentially going to house federal inmates or inmates of another state. Those provisions were struck in the committee amendment and then those provisions were not reiterated in Senator Schimek's amendment to LB 85. Now, I'm not...Senator Brashear has commented briefly on the committee amendment. My concern is just the very narrow legal issue that I don't think the committee amendment can meet the constitutional test concerning commerce clause activities. I would have much rather seen the provisions in 5 and 6 allow or...in the bill. Senator Brashear wants to try to solve the problem with a severability clause but, if I'm right and somebody litigates, all you're left with is no regulation, essentially, of persons who operate a private prison for federal prisoners or out of state prisoners. I don't think that's appropriate. But maybe we'll leave it...if you don't adopt my amendment, maybe we'll just leave that to future litigation and we'll find out. But my guess is that then there would be a mad scramble in here to put in place something like Sections 5 and